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SENSITIVE

SIPDIS

STATE FOR EAP/MTS, EAP/EP, EEB/IFD, AND EEB/TPP/MTA/IPC  
STATE PASS USTR FOR BWEISEL, RBAE AND KEHLERS  
STATE PASS USAID, OPIC, USDA  
BANGKOK FOR JENNIFER NESS  
TREASURY FOR OASIA  
USDOC FOR 4430/ITA/MAC  
USDOC PASS USPTO

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SUBJECT: Supreme Court Endorses Parallel Importation of Drugs

¶1. (SBU) Summary: The Philippine Supreme Court has ruled that the Cheaper Medicines Act has legalized parallel imports of pharmaceuticals by third parties, superseding legislation that banned such imports. The decision potentially affects the patentability of medicines by declaring that the Philippine Constitution creates a right to inexpensive health care. The decision means that importers may no longer need to register with the Bureau of Food and Drug. End summary.

¶2. (U) On May 11, the Philippine Supreme Court ordered prosecutors in the province of Pampanga to drop charges against a pharmacy, Roma Drug, for illegal importation of patented GlaxoSmithKline products. The Court ruled that the Special Law on Counterfeit Drugs of 1996, under which the pharmacy had been charged, had been overtaken by the Cheaper Medicines Act of 2008, which explicitly allows third-party parallel importation of medicines. The Court, however, went beyond this finding, and asserted that the former law was in fact unconstitutional, because it violated a provision in the Philippine Constitution that "health services [be] available to all the people at affordable cost."

¶3. (SBU) EconOff spoke to Midas Marquez, chief of staff to Chief Justice Puno, about the decision. Marquez said that the main finding of the Court in this decision is that the Cheaper Medicines Act superseded the Special Law on Counterfeit Drugs of 1996. He told us that this was a simple decision made necessary by the omission of language in the Cheaper Medicines Act repealing older contradictory legislation. On the subject of the older law's constitutionality, Marquez insisted that the Court only addressed it as an academic exercise, and it is now a moot question. The constitutional requirement that health care be affordable is a general principle that sits alongside other legal principles such as intellectual property rights.

¶4. (SBU) The decision is not yet final, as the Solicitor General and GlaxoSmithKline will file motions for reconsideration. The head of the legal department at the Manila office of GlaxoSmithKline, who is drafting the motion, told us that the company is most worried over the draft decision's implication that third party importers of patented medicines will not need to register with the Bureau of Food and Drug, as the Cheaper Medicines Act ostensibly requires. The company is encouraged that the Office of the Solicitor General, on behalf of the Arroyo administration, will join in the motion contesting the Supreme Court's ruling.

¶5. (SBU) Comment. This ruling apparently does little more than reaffirm the provisions of the Cheaper Medicines Act allowing parallel imports. However, if it overturns the registration

requirement, counterfeit drugs could become a serious problem with significant potential implications for health. The Supreme Court's invocation of a broader right to inexpensive health care could be problematic if courts, contrary to Marquez's assurances, decided to read this as a precedent. At this point, we believe that is unlikely.

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